

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID TROUPE,

Plaintiff,

v.

KENNITH R. BRODHEAD,

Defendants.

No. 13-CV-5028-EFS

ORDER REGARDING CONSOLIDATION

DAVID TROUPE,

Plaintiff,

v.

KATRINA SUCKOW, BONNIE KLAHN, and
THOMAS ROE,

Defendants.

No. 13-CV-5038-EFS

Before the Court are numerous motions by the parties as well as the issue of consolidation. The Court takes each issue in turn.

I. Consolidation of Cases

Federal Rule of Civil Procedure 42(a) permits a court to "join for trial" or consolidate actions before the Court that "involve a common question of law or fact." On April 18, 2016, the Court requested briefing by the parties on whether consolidating these two cases was appropriate. The Court believed that given the similar questions of law and fact and the similar procedural postures,

1 consolidation was appropriate. The Defendants responded and are in
2 favor of consolidation but request a continuance if the Court chooses
3 to do so. ECF Nos. 203 & 204. Plaintiff does not oppose consolidation
4 but requests mediation if the Court consolidates.

5 Both of these cases are now past the discovery and summary
6 judgment stages of litigation. Plaintiff in both cases alleges Eighth
7 Amendment violations by employees of the Washington State
8 Penitentiary. The backgrounds in these two cases are substantially
9 the same. Therefore, pursuant to Federal Rule of Civil Procedure
10 42(a), the Court consolidates these two cases finding that both cases
11 have similar questions of law and fact, and that judicial economy and
12 the ends of justice are best served by combining these two cases. The
13 Court sets new trial and pretrial dates, as well as additional
14 deadlines below.

15 As to Plaintiff's request for mediation, the Court is not
16 opposed to the idea. However, the Court will not force the parties to
17 mediate if they do not want to participate. It is clear that the
18 Plaintiff seeks mediation. However, the Court will order mediation
19 only if the Defendants believe it also proper. By no later than May
20 31, 2016, Defendants must file a notice with the Court indicating
21 whether they support referring this case to mediation.

22 **II. Motion for Protective Order, Case No. 13-CV-5038, ECF No. 195**

23 Plaintiff seeks a protective order in *Troupe v. Suckow*, 13-CV-
24 5038. ECF No. 195. Plaintiff appears to seek an order requiring
25 either that 1) Ms. Amy Clemmons be forced to remain as the attorney
26 of record in this case or 2) bar all other attorneys for the

1 Washington State Attorney General's office from accessing the records
2 in this matter. As to Plaintiff's first request, Local Rule
3 83.2(d)(3) states: "Where there has simply been a change (withdrawal
4 or addition) of counsel within the same law firm, and order of
5 substitution is not required." If two attorneys practice in the same
6 law firm, they may substitute in on a case without permission from
7 the Court. Therefore, the Court will not force Ms. Clemmons to remain
8 on this case if the Attorney General's Office believes it in its best
9 interest to substitute counsel.

10 As to Plaintiff's privacy concerns, the Court expects that the
11 Attorney General's Office, and all the attorneys working on this
12 case, will take reasonable measures to protect the medical and mental
13 health records of Plaintiff. However, the Court will not bar certain
14 individuals who work in that office from accessing those records.
15 Therefore, Plaintiff's Motion for Protective Order, ECF No. 195, is
16 denied.

17 **III. Motion for 25 Blank Subpoenas, Case No. 13-CV-5038, ECF No. 212**

18 Plaintiff asks for "25 blank subpoenas for witnesses in #13-CV-
19 5038-EFS July 18, 2016 trial" without explanation or clarification.
20 The Court assumes that this request is in response to the Court's
21 previous Order Regarding Plaintiff's Trial Witnesses, ECF No. 202. As
22 the Court stated in that order, if Plaintiff wants to subpoena
23 witnesses, "he must first file a motion with the Court clearly and
24 specifically identifying 1) the first and last name of each witness
25 for whom he seeks the issuance of a trial subpoena, and 2) the
26 witness's address at which service will be effected." A motion

1 requesting 25 blank subpoenas, more than is currently on his witness
2 list, without explanation or clarification, does not suffice.

3 Additionally, Plaintiff has failed to abide by the Court's
4 scheduling order in that his witness list, ECF No. 214, fails to
5 "include a brief description of the witness, a brief summary of the
6 witness' anticipated testimony, whether the witness will be called as
7 an expert, and any known trial date/time conflicts that witness has."
8 ECF No. 173.

9 For these reasons, Plaintiff's Motion for 25 Blank Subpoenas,
10 ECF No. 212, is denied. If Plaintiff wants to subpoena witnesses for
11 trial, he must file a list of witnesses with the Court clearly
12 stating what he expects each witness to testify to and why that
13 testimony is relevant to the narrow Eighth Amendment claims in these
14 cases. The Court will then send the subpoenas for those witnesses and
15 will not permit him to subpoena witnesses that have not been approved
16 by the Court. New deadlines for witness lists are delineated below.

17 **IV. Motion to Approve a Subpoena, Case No. 13-CV-5038, ECF No. 215**

18 Plaintiff asks the Court to approve a discovery subpoena in
19 *Troupe v. Suckow*, 13-CV-5038. ECF No. 215. The Court reminds
20 Plaintiff that discovery in these cases has ended. All that remains
21 for both of these cases is to prepare for trial using the discovery
22 already obtained. No further discovery subpoenas will be approved.
23 Only trial subpoenas will be issued and only after the requirements
24 in the Court's orders have been met. Therefore, Plaintiff's Motion to
25 Approve Subpoena, ECF No. 215, is denied.

26 /

V. Motion for Reconsideration, Case No. 13-CV-5028, ECF No. 268

Plaintiff asks the Court to reconsider its Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment. ECF No. 268. Specifically, Plaintiff argues that Mr. Christopher Bowman should not be dismissed from this case. Plaintiff, however, provides no new evidence or case law supporting his proposition. He simply argues that Mr. Bowman retaliated against him in a different way. As the Court stated in its order, Plaintiff has failed to show an essential element of his First Amendment retaliation claim against Mr. Bowman and therefore summary judgment is appropriate. Therefore, Plaintiff's Motion for Reconsideration, Case No. 13-CV-5028, ECF No. 268, is denied.

VI. Conclusion & Deadlines

The parties must carefully read the Court's prior Scheduling Order, ECF No. 173, and abide by its requirements that are not superseded by the deadlines below. The following deadlines apply to the single consolidated remaining case:

Witness and Exhibit lists: Lists filed and served: Objections filed and served:	September 1, 2016 September 9, 2016
Deposition Designations: Designated Transcripts served: Cross-Designations served: Objections filed and served:	August 12, 2016 August 19, 2016 August 26, 2016
All motions <i>in limine</i> filed	September 1, 2016
Joint Proposed Pretrial Order filed and emailed to the Court	September 23, 2016
Confer with Courtroom Deputy regarding JERS	1 Week Before Pretrial
PRETRIAL CONFERENCE	October 4, 2016 1:30 P.M. - Richland

1 2 3	Trial briefs, jury instructions, verdict forms, requested voir dire, and list of exhibits admitted without objection, filed and emailed to the Court	October 10, 2016
4	Mediation, if any, must be completed by	90 Days Before Trial
5	JURY TRIAL	October 24, 2016 9:30 A.M. - Richland

6
7 The parties do not need to refile the motions in limine they
8 have already filed. Those will be heard at the October 4, 2016
9 pretrial conference. If the parties wish to file additional motions
10 in limine, *specific to the claim against Officer Brodhead*, which are
11 being consolidated into this case, they must do so by the deadlines
12 listed above.

13 **Accordingly, IT IS HEREBY ORDERED:**

- 14 1. Plaintiff's Motion for Protective Order, **Case No. 13-CV-**
15 **5038, ECF No. 195, is DENIED.**
- 16 2. Plaintiff's Motion for 25 Blank Subpoenas, **Case No. 13-CV-**
17 **5038, ECF No. 212, is DENIED.**
- 18 3. Plaintiff's Motion to Approve a Subpoena, **Case No. 13-CV-**
19 **5038, ECF No. 215, is DENIED.**
- 20 4. Plaintiff's Motion for Reconsideration, **Case No. 13-CV-**
21 **5028, ECF No. 268, is DENIED.**
- 22 5. *Troupe v. Brodhead*, 4:13-CV-5028-EFS, and the single
23 remaining Eighth Amendment claim against Officer Brodhead
24 is merged into this case.
- 25 6. **All future filings in either case shall be filed under Case**
26 **Number 4:13-CV-5038-EFS, unless the Court later directs**

otherwise. Case Number 4:13-CV-5028-EFS shall be administratively closed.

7. The Caption is hereby **AMENDED**. All papers filed in this action shall hereinafter use the caption "DAVID TROUPE, Plaintiff, v. KENNITH BROADHEAD, KATRINA SUCKOW, BONNIE KLAHN, and THOMAS ROE, Defendants," and shall bear the docket number, "**4:13-CV-5038-EFS**."

8. All parties in both cases are to file all documents pursuant to the deadlines set forth above and subject to the requirements set forth in the Court's December 8, 2015 Amended Scheduling Order, ECF No. 173.

9. Defendants must file a notice with the Court by May 31, 2016, stating whether or not they believe mediation is appropriate in this matter.

10. Plaintiff's Motion in Limine, **ECF No. 196**, and Defendants' Motion in Limine, **ECF No. 181**, are **RESET** to be heard at the **October 4, 2016** pretrial conference.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to counsel and Mr. Troupe.

DATED this 17th day of May 2016.

s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge